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SUBJECT: Embassy Comments on Vatican Note on Gacaca

REF: A. VATICAN 0059

B. KIGALI 393

1. Summary: Ref (A) Vatican note criticizes the gacaca tribunals in Rwanda for not serving the purposes for which they were created. It characterizes the gacaca process as politically manipulated and procedurally flawed, citing specific concerns. While Embassy recognizes, as does the GOR, that there are weaknesses in the system, in its view the note does not accurately reflect the process. Post raised with the Director of the Legal Unit, National Service of Gacaca Jurisdictions, some of the cited areas of concern. He held that there is no presumption of guilt against those who appear before gacaca. Evidence against the accused is presented publicly during an open-forum evidentiary hearing where everyone is given the opportunity to comment on the evidence and the individual. The accused are allowed to have others testify on their behalf. Prisoners are not given reduction or suspension of sentence for denouncing accomplices, and the penalty for providing false testimony is imprisonment. He asserted that gacaca was established as an independent body and is not subject to political influence. It does not target Hutus or property owners but individuals from every sector of Rwandan society who participated in the genocide. End summary.

Provisional Release of Prisoners

2. The paper notes that innocent individuals remain in prison while those responsible for the genocide are freed, creating resentment among both Hutus and Tutsis.

3. Comment: The approximately 50,000 prisoners who were provisionally released by presidential decree between 2003 and 2005 were the elderly, sick, minors, or those charged with less serious genocide crimes (categories 2 and 3) who had already served out their maximum sentences and had received credit for time served. According to the International Committee of the Red Cross, the provisional release relieved some of the overcrowding in prisons, improving the prison standards for the remaining prisoners. Subsequently, some of the released prisoners were returned to prison based on additional evidence implicating them in Category 1 genocide offenses.

False Denunciations

4. The paper states that detainees can plead guilty and denounce their accomplices in exchange for a reduction or suspension of sentence. As a result, false denunciations have exacerbated hatred and mistrust, undermining the reconciliation process and the search for truth.

¶5. Comment: According to Augustin Nkusi, Director of the Legal Unit, National Service of Gacaca Jurisdictions, the number of false denunciations is very small; he estimated it at less than 10 percent. Of the 7,000 accused genocidaires tried since last year during the pilot phase, approximately 600 were acquitted based on factors related to the strength of the evidence, not due to false denunciations. At the beginning of the pilot phase, approximately 20 percent of those accused were acquitted; the acquittal rate is now an estimated 12 percent.

¶6. Individuals may be found guilty by a panel of gacaca judges on the basis of a single person providing credible testimony. The penalty for providing false testimony, as determined by the panel of judges, is 3-6 months' imprisonment for first-time offenders, and 6-12 months' imprisonment for recidivists. The panel of judges has the authority to release falsely denounced individuals. Nkusi estimated that 600 individuals, in addition to the 600 acquitted after trial, were released during the pilot phase prior to trial after it was determined that they were falsely accused.

¶7. Detainees do not receive a reduction or suspension of sentence for denouncing accomplices, but can get reduced or suspended sentences for confessing to their own crimes. Conviction of a Category 1 crime (rape, other sexual offenses, or planning the genocide) is punishable by death or life imprisonment, or a reduced penalty of 25-30 years if the accused confesses prior to the information-gathering phase. If the accused confesses after the information-gathering phase, there is no reduction of sentence (although there is currently a proposal to provide some reduction).

¶8. Conviction of a Category 2 offense (intentional killing,
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causing injury with intent to kill, or causing injury without intent to kill) carries a sentence of 25-30 years' imprisonment, or a reduced sentence (half-time in prison, half-time in community service) of 12-15 years with confession after the information-gathering phase, or 7-12 years with confession prior to the information-gathering phase. Conviction of a Category 3 offense (crimes against property) carries only a fine. (Note: In June 2004, then Category 2 (causing injury with intent to kill) and Category 3 (causing injury without intent to kill) were combined into one category (current Category 2), resulting in a three-category system. According to Nkusi, the two categories were combined because it was difficult for gacaca judges to determine individual intent. End note.)

Preparation of Dossiers

¶9. The paper estimated that over 20,000 innocent people (or 20 percent of the prison population) remain imprisoned because they have not pled guilty or denounced others, and noted that there are no files on these individuals that would allow them to appear before a gacaca tribunal.

¶10. Comment: Nkusi maintained that those remaining in prison have either confessed to their crimes or were arrested and imprisoned prior to the establishment of the gacaca tribunals. He explained that when the gacaca process establishes the innocence of imprisoned individuals, they are unconditionally released. Currently, there are 5,000 petitions for the release of prisoners who were found not guilty by prison gacaca tribunals. (Note: In addition to the gacaca tribunals in each community, there are gacaca tribunals within the prison system, one in each prison. End note.) The National Service of Gacaca Jurisdictions is in the process of reviewing those petitions.

¶11. Nkusi explained that preparing a dossier on a prisoner is difficult and time-consuming, especially in cases where

witnesses have died. In addition, in the immediate aftermath of the genocide and civil war, the Rwandan Patriotic Army (RPA) dealt with the chaotic situation in various ways; in some cases the military arrested individuals without properly documenting the arrests. As a further complication, during the massive repatriation of Rwandans from DRC in 1996, some voluntarily confessed their crimes to police and were imprisoned but are now retracting their confessions. (Note: In 1996, up to 2 million Rwandans living in eastern DRC returned to Rwanda after the RPA entered the DRC to pursue ex-Rwandan Armed Forces and genocidaires. End note.)

Educated Hutus and Property Owners

¶12. The paper alleges that the accused are primarily educated Hutus or property owners, and that "political authorities" determine beforehand the individuals to be judged and the sentences to be applied.

¶13. Comment: There has been no survey or other evidence to support the view that the accused are primarily educated Hutus or property owners. In fact, given that approximately 82 percent of Rwanda's population is involved in subsistence agriculture, it is likely that those accused are primarily uneducated farmers. Nkusi maintained that gacaca does not target specific categories of individuals. Individuals from every sector of Rwandan society were involved in the genocide because of the way in which the former government orchestrated it -- horizontally and vertically throughout the population. He noted that for the most part educated people did not participate directly in the killings but did incite violence, a crime punishable under gacaca.

¶14. According to Nkusi, decisions on the individuals to be judged or sentences to be applied are not made a priori. All decisions are made by majority vote (minimum of 5 votes) by a panel of 9 trained gacaca judges after listening to and weighing all the testimony presented for and against the accused.

Atmosphere of Gacaca

¶15. The critique notes that the atmosphere is tense, that the majority of gacaca participants are hostile towards those who are brought before the tribunal. It also notes that there is a presumption of guilt against those who appear before gacaca, that innocence must be proven, which is difficult for the majority of those coming from prison,

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and that defense lawyers are prohibited.

¶16. Comment: The atmosphere may be tense, as in any regular courtroom, as accused perpetrators come face to face with survivors and victims' families, sometimes for the first time since the genocide. However, Nkusi held that there is no presumption of guilt against those who appear before gacaca. Before an individual is brought before gacaca for trial, an accusation must first have been made against that individual and an evidentiary hearing held. During the hearing, evidence is presented publicly, and anyone is free to comment on the evidence and the individual.

¶17. There are no designated defense lawyers because, unlike the regular court system, gacaca is an inclusive, participatory process in which everyone has equal standing and lawyers do not dominate. Lawyers, however, in their private capacity as Rwandan citizens, are free to speak in defense of accused individuals, and the accused are allowed to have witnesses testify on their behalf. Nkusi explained that by law everyone is required to provide information on the genocide and that such information is not an

"accusation," per se, but a necessary element of the information-gathering phase.

Political Authorities and Ibuka

¶18. The paper states that "the whole process seems to be a set-up." Although in theory everyone has the right to speak up, in practice the "political authorities" and members of Ibuka (Association of Genocide Survivors), "who are under the strong influence of the regime," speak first, and some are paid to provide false testimony.

¶19. Comment: Nkusi stated that the law is clear on the issue of interference. If interference is reported, it is investigated and the individuals involved are denounced. Gacaca tribunals were established by law as independent bodies and are not subject to political influence. Decisions are not made a priori. They are made by majority vote by a panel of 9 judges on the basis of testimony voiced during the gacaca proceeding. "Political authorities" and Ibuka members, like any other member of the community, are free to speak as individuals in their private capacity and do not speak on behalf of their organization or party.

¶20. Nkusi speculated that there may be some confusion because people tend to equate genocide survivors with Ibuka and, therefore, may believe that when an Ibuka member speaks he is speaking on behalf of the organization. He observed that although there may be some reticence among Rwandans in accusing others, especially relatives or friends whom they wish to protect, survivors have a vested interest in denouncing genocidaires and seeking justice.

Upcoming Trials

¶21. There are 12,103 gacaca courts throughout the country. To date, approximately 7,000 accused genocidaires have been tried during the pilot phase of gacaca. With the investigative/information-gathering phase drawing to a close, nationwide trials are scheduled to begin in May, after adoption of pending amendments to the law on gacaca. As we have reported, post recognizes that there are flaws in the gacaca system, which the GOR has readily acknowledged and is working to improve. Post will closely monitor the process as trials get under way, and will urge full respect for human and civil rights for the accused.

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